



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Establishing a Policy Governing the Receipt and Distribution of Tickets and/or Passes

MEETING DATE: July 15, 2009

SUBMITTED BY: City Attorney

RECOMMENDED ACTION: Adopt resolution establishing a policy governing the receipt and distribution of tickets and/or passes.

BACKGROUND INFORMATION: The Fair Political Practices Act governs the distribution of tickets received by an agency as a result of its operation of event venues. Under a recently adopted Fair Political Practices Commission (FPPC) regulation, such tickets must be distributed pursuant to a specific policy adopted by the Council. The regulation defines ticket to include admission to events, shows or performances for entertainment, amusement or recreation obtained from an outside source, acquired pursuant to a contract for use of agency owned property, for an agency controlled event, or purchased by the agency at fair market value.

On limited occasions in the past, the City has received and distributed tickets to City sponsored events, for purposes of industrial trade, marketing, or employee incentives (usually when ticket sales have been weak). The new FPPC regulation now requires that the receipt and distribution of such tickets be governed by a written policy that sets forth the permissible use of covered tickets for public purposes.

If the Council desires to allow the continued receipt and distribution of such tickets for public purposes, it must adopt a policy. The City Attorney's office has drafted the attached policy for the Council's consideration. The proposed policy complies with FPPC Regulation Section 18944.1, and is similar to policies adopted by other cities in California. Alternatively the City could outright prohibit the receipt and distribution of such tickets.

COSTS: None.

FUNDING: n/a



Attachments: Resolution
FPPC Regulation 518944.1
Form 802

APPROVED:



Manager

(Regulations of the Fair Political Practices Commission Title **2**, Division **6**, California Code of Regulations)

§ 18944.1. Gifts: Tickets or Passes to Events.

For purposes of this regulation "ticket or pass" means admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose.

(a) Ticket or pass provided by source other than official's agency. A ticket or pass provided to an official for his or her admission to an event at which the official performs a ceremonial role or function on behalf of the agency is not a gift to the official.

(b) Ticket or pass provided to official by official's agency.

(1) When an agency provides a ticket or pass to an official of that agency, the ticket or pass is not subject to the provisions of this regulation, provided that the official treats the ticket or pass as income consistent with applicable state and federal income tax laws and the agency reports the distribution of the ticket or pass as income to the official in complying with the provisions of subdivision (d) below.

(2) When an agency provides a ticket **or** pass to a public official that otherwise meets the definition of gift under Section 82028 and is not exempt under applicable Commission regulations, the official will meet the burden under Section **82028** that equal or greater value has been provided in exchange therefor, provided that all of the following requirements are met:

(A) With respect to a ticket or pass from an outside source provided to an official by the official's agency:

(i) The ticket or pass is not earmarked by the original source for use by the agency official who uses the ticket **or** pass;

(ii) The agency determines, in its sole discretion, which official may use the ticket or pass.

(iii) The distribution of the ticket or pass by the agency is made in accordance with a policy adopted by the agency in accordance with subdivision (c) below.

(B) With respect to a ticket or pass provided by the official's agency to an agency official, which ticket or pass the agency obtains (i) pursuant to the terms of a contract for use of public property, (ii) because the agency controls the event (such as a state or county fair), or (iii) that is purchased by the agency at fair market value, the distribution of the ticket or pass is made in accordance with subdivision (c) below.

(c) Any distribution of tickets or passes under subdivision (b)(2) by an agency to, or at the behest of, its officials must be made pursuant to a written policy duly adopted by legislative or governing body of the agency that state the public purposes to be accomplished by the agency policy. If the agency maintains a website, the written policy shall be posted on the website in a prominent fashion. The written policy shall contain, at a minimum, the following:

(1) a provision setting forth the public purposes of the agency to be accomplished by the distribution of tickets or passes;

(2) a provision requiring that the distribution of any ticket or pass by the agency to, or at the behest of, an official accomplish a public purpose of the agency; and

(3) a provision prohibiting the transfer by any official of any ticket or pass, distributed to such official pursuant to the agency policy, to any other person, except to members of the official's immediate family solely for their personal use.

(d) The distribution of a ticket or pass pursuant to this regulation, including a ticket or pass that is provided to the official under subdivision (b)(1) above, shall be posted, on a form

provided by the Commission, in a prominent fashion on the agency's website, within 30 days after the distribution. If the agency does not maintain a website, the form shall be maintained as a public record, be subject to inspection and copying under Section 81008(a), and be forwarded to the Commission for posting on its website. The posting shall include the following:

(1) the name of the person receiving the ticket or pass, except that if the ticket or pass is distributed to an organization outside the agency, the agency may post the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;

(2) a description of the event;

(3) the date of the event;

(4) the face value of the ticket or pass;

(5) the number of tickets or passes provided to each person;

(6) if the ticket or pass is behested, the name of the official who behested the ticket or pass; and

(7) a description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.

(e) The Commission recognizes the discretion of the legislative or governing body of an agency to determine whether the distribution of a ticket or pass serves a legitimate public purpose of the agency, provided the determination is consistent with state law.

(f) The provisions of subdivision (b) apply only to the benefits the official receives by the admission and are not applicable to any other benefits the official may receive that are not included with the admission, such as food or beverages, or any other item presented to the official at the event.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

HISTORY

1. Renumbering of former section 18726.7 to section 18944.1 with amendment of section heading **filed** 6-22-94; operative 6-22-94 (Register 94, No. 25).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of first paragraph and subsections (a)-(b) and (d)-(e) filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
4. Repealer and new section filed 1-8-2009; operative 2-7-2009. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil 010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2009, No. 2).

1. Agency Name <hr/> Division, Department, or Region (if applicable) <hr/> Street Address <hr/> Area Code/Phone Number E-mail <hr/> Agency Contact (name and title)		Date Stamp <hr/>	<div style="background-color: black; color: white; padding: 5px; text-align: center;"> California Form 802 </div> <div style="border: 1px solid black; padding: 5px; text-align: center;"> For Official Use Only </div>
		<input type="checkbox"/> Amendment <i>(Must explain in Part 5.)</i> Date of Original Filing: _____ <div style="text-align: right; font-size: small;">(month. day. year)</div>	

Date(s) of Event: ____/____/____ Description of Event: _____
 _____/_____/_____ Face Value of Ticket: \$ _____

Agency Event ☐ Yes ☐ No (Identify source of tickets below.)

Name of Outside Source of Ticket(s) Provided to Agency: _____

Number of Tickets Received: _____ Ticket(s) Provided to Agency: ☐ Gratuitously ☐ Pursuant to Contract

3. Agency Official(s) Receiving Ticket(s) (use a continuation sheet for additional names)

Name of Official (Last, First)	Number of Tickets	State Whether the Distribution is Income to the Official or Describe the Public Purpose for the Distribution

4. Individual or Organization Receiving Ticket(s) (Provided at the behest of an agency official.)

Name of Behesting Agency Official: _____

Name of Individual or Organization: _____ Number of Tickets: _____

Description of Organization: _____

Address of Organization: _____

Number and Street
City
state
Zip Code

Purpose for Distribution: (Describe the public purpose for the distribution to the organization.)

5. Verification

I have *determined* that the distribution of tickets set forth above is in accordance with the provisions of FPPC Regulation 18944.1

Signature of Agency Head or Designee	Print Name	Title	(month. day. year)
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Comment: (Use this space or an attachment for any *additional information* including amendment explanation.)

Tickets Provided by Agency Report

California
Form **802**

A Public Document

This form is for use by all state and local government agencies to disclose the distribution of tickets or passes that allow admission to facilities, events, shows, or performances for entertainment, amusement, recreational, or similar purposes. The agency must complete Form 802 identifying agency officials who receive tickets or passes from the agency as well as other individuals and organizations that receive tickets or passes at the behest of agency officials. Form 802 must be posted in a prominent fashion on the agency's website.

Gifts of Tickets or Passes to Public Officials

FPPC Regulation 18944.1 sets out the circumstances under which an agency's distribution of tickets or passes to or at the behest of an official in the agency does not result in a gift to the official. (Regulation 18944.1 is available on the FPPC website at www.fppc.ca.gov.) Even though the distribution of tickets or passes to a public official under the regulation is not a gift to the official, the agency must disclose the distribution on Form 802. The official does not have to disclose tickets or passes received or distributed under the regulation on his or her Statement of Economic Interests (Form 700), but tickets or passes received or distributed by the official that do not fall under the regulation may be subject to disclosure on the official's Form 700 and subject to gift limits.

Posting Form 802

The Form 802 must be posted on the agency's website within 30 days after the distribution. If the agency does not maintain a website, the form must be maintained by the agency as a public record, be available for public inspection and copying, and be forwarded to the FPPC for posting on its website.

Part 1. Agency Identification

List the agency's name, address and the name of an agency contact. Mark the amendment box if changing any information on a previously filed form and include the date of the original filing.

Part 2. Event For Which Tickets Were Distributed

Provide the date(s) of the event, a description of the event, and the face value (i.e. the cost to the public) of the ticket or pass. Check the box indicating whether the event was an "agency event" (such as a county fair, or an event for which the agency purchased tickets). If the agency received the tickets from an outside source, identify the source, the number of tickets received, and check the box to identify whether the tickets or passes were provided to the agency:

- Gratuitously; or
- Pursuant to a contract.

Part 3. Agency Official(s) Receiving Ticket(s)

Disclose the name of each agency official that received a ticket or pass and the number of tickets or passes the official received. Also state whether the distribution is income to the official or describe the public purpose for which the official received the tickets or passes.

Part 4. Individual or Organization Receiving Ticket(s)

If tickets or passes were distributed to an individual or organization outside the agency, at the behest of an official of the agency, provide the name of the official. Disclose the name(s) of the individual(s) who received the tickets or passes and the number of tickets or passes provided. If the tickets or passes were provided to an organization, the agency may post the name, address, a description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the name of each individual that received a ticket or pass. Also, describe the public purpose for the distribution to the individual or organization.

Part 5. Verification

The agency head or his or her designee must sign the form.

Privacy Information Notice

Information requested on all FPPC forms is used by the FPPC to administer and enforce the Political Reform Act (Government Code Sections 81000-91014 and California Code of Regulations Sections 18109-18997). All information required by these forms is mandated by the Political Reform Act. Failure to provide all of the information required by the Act is a violation subject to administrative, criminal, or civil prosecution. All reports and statements provided are public records open for public inspection and reproduction.

If you have any questions regarding this Privacy Act Notice, please contact the FPPC.

General Counsel
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814
(916) 322-5660

RESOLUTION NO. 2009-99

A RESOLUTION OF THE LODI CITY COUNCIL
ESTABLISHING A POLICY GOVERNING THE RECEIPT
AND DISTRIBUTION OF TICKETS AND/OR PASSES

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LODI AS
FOLLOWS:

Section 1. The City Council of the City of Lodi hereby finds, determines, and declares as follows:

- A. From time to time, the City receives tickets or passes to various facilities, events, or performances or shows from third party sources, both public and private, which the City distributes to various persons including city employees and officials; and
- B. The Fair Political Practices Commission ("FPPC") has promulgated regulations regarding when disclosure of receipt of these tickets as gifts may be required for those city officials deemed to be who file annual Statements of Economic Interest ("Form 700") under the City's Conflict of Interest Code; and
- C. FPPC Regulations Section 18944.1 permits covered tickets to be distributed to these city officials without being treated as gifts on Form 700 if the City distributes these tickets in accordance with a duly adopted written policy consistent with Section 18944.1; and
- D. FPPC has clearly stated that it recognizes the discretion of the City Council to determine whether the distribution of such tickets serves a legitimate public purpose of the City.

Section 2. Policy Governing the Receipt and Distribution of Tickets and/or Passes.

The following standards shall apply to the distribution by the City of tickets and/or passes for admission to a facility, event, show, or performance for entertainment, amusement, recreation, or similar purposes as defined by the FPPC Regulation Section 18944.1.

1. Definitions:

- a. "Designated Official" shall mean a City public official required by the City's Conflict of Interest Code, as may be amended from time to time, to file a Statement of Economic interest.
- b. "Ticket" shall mean a ticket and/or pass for admission to a facility, event, show, or performance for entertainment, amusement, recreation, or similar purposes (as defined by FPPC Regulation 18944.1, as amended and interpreted from time to time) that is obtained by the City, a) from an outside source, b) acquired by the City pursuant to a contract for use of City-owned property, c) for a City-controlled event, or d) purchased by the City at fair market value. This definition shall not include a ticket to an event where

there is no admission fee, or to civic, political, community, and/or cultural activities including, but not limited to, employee recognitions, neighborhood events, state of the city addresses, and community prayer programs, unless expressly determined otherwise by the FPPC or judicial decision.

- c. "Immediate Family" shall mean spouse and dependent children as set forth in Government Code Section 82029.

2. Purpose of Policy. The purpose of this policy is to ensure that all Tickets provided to the City shall be distributed in accordance with FPPC Regulation 18944.1.

3. Limitations.

- a. This Policy shall only apply to the City's distribution of Tickets to, or at the behest of, a Designated Official.
- b. Tickets provided to a Designated Official as part of their official duties, or tickets provided so that the Designated Official may perform a ceremonial role or function on behalf of the City, shall not be subject to this Policy. These tickets are exempt from any FPPC disclosure or reporting requirements.

4. Public Purpose. The City Council hereby finds and determines, in its sound discretion that the City will accomplish one or more of the following public purposes through distribution of Tickets to Designated Officials, or provided to third persons at the behest of a Designated Official. The list is intended to be illustrative rather than exhaustive of the public purposes that may be served by Designated Officials utilization of Tickets:

- a. Economic, employment, and business development on behalf of the City and businesses within the City, including conventions and conferences.
- b. Promotion of City-controlled or -sponsored events, activities, or programs, public facilities, and resources.
- c. Promotion of tourism within the City and the surrounding area.
- d. Information gathering and education regarding matters of local, regional, and statewide concern that affect the City, including enhancing intergovernmental relations through including attendance at events with or by elected and appointed officials from other jurisdictions.
- e. Promoting or showing City appreciation for programs and services rendered by community and other non-profit and charitable resources for the benefit of the community, including artistic and cultural organizations and institutions.
- f. Promoting, encouraging, and rewarding educational and athletic achievements by students and officials of local and regional educational institutions.

- g. Promotion of City recognition, visibility, and/or profile on a local, state, national, or worldwide scale including exchange programs with national and foreign officials and dignitaries.
- h. Promotion of open government by Designated Official appearances, participation and/or availability at business or community events.
- i. Promotion of City landmarks and/or community events.
- j. Marketing promotions highlighting the achievements of local residents and businesses.
- k. Promotion of inter-governmental relations, i.e., cooperation and coordination of resources between the City and other governmental agencies or entities within San Joaquin County.
- l. Attracting and retaining highly qualified employees in City service.
- m. Special recognition or reward of meritorious service by a City employee or for use in a City employee competition or drawing.
- n. Performance of a ceremonial or official function on behalf of the City, including the attendance of the Designated Official's Immediate Family.
- o. Recognition of contributions made to the City by former City Council members and City officials.
- p. Promotion of special events in accordance with any City contract, including those contracts where the City as a form of consideration has required that a certain number of Tickets be made available for City use.
- q. Events sponsored by the City where the City specifically seeks to enhance the City's reputation both locally and regionally by serving as hosts by providing the necessary opportunities to meet and greet visitors, dignitaries, public officials from neighboring jurisdictions, residents of the City, and their guests.

5. City Manager. The City Council hereby delegates the authority to distribute any Tickets in accordance with this policy to the City Manager or his or her designee. In such case where the City Manager desires to obtain a Ticket, the City Council authorizes the City Manager to exercise the City's sole discretion in determining whether the City Manager's use or distribution of tickets and/or passes is in accordance to the terms of this policy.

6. Return of Tickets. Any Designated Official or the Designated Official's immediately Family may return any Ticket unused to the City for redistribution pursuant to this policy. Under no circumstances may either the Designated Official or the Designated Official's Immediate Family sell or further transfer any Ticket provided under this policy.

7. Transfer Prohibition. The transfer by any Designated Official of any Ticket distributed pursuant to this policy to any other person, except to members of the Designated Official's Immediate Family for their personal use, is prohibited.

8. Policy Limited to Tickets. Pursuant to FPPC Regulation 18944.1(f), this policy applies only to Tickets and is not applicable to any other benefits received as a part of admission, such as food and beverages.

9. Website Posting. This policy shall be prominently posted on the City's website.

10. Website Disclosure. The distribution of any Ticket pursuant to this policy shall be prominently posted on the City website within 30-days after the ticket distribution and shall include all of the information as required under FPPC Regulation 18944.1(d). Any such posting shall use FPPC Form 802 or such alternative form as may be approved or amended from time to time. Such posting shall be for a period of 30-days, unless a specific duration is otherwise provided for by FPPC Regulation.

Section 3. This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopted this Resolution.

Dated: July 15, 2009

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I hereby certify that Resolution No. 2009-99 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009, by the following votes:

AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katzakian,
Mounce, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS –



City Clerk